

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE METHYL TERTIARY BUTYL ETHER
PRODUCTS LIABILITY LITIGATION

Master File No. 1:00-1898
MDL 1358 (SAS)
M21-88

This document pertains to:

City of New York v. Amerada Hess Corp., et al., No.
04-CIV-3417

**DECLARATION OF MICHAEL J. DILLON IN SUPPORT OF EXXONMOBIL'S REPLY
MEMORANDUM OF LAW IN FURTHER SUPPORT OF ITS MOTION TO EXCLUDE
TESTIMONY AND OPINION OF MARTIN TALLETT**

Michael J. Dillon, an attorney duly admitted to practice law in the State of New York and in this Court, hereby declares under penalty of perjury:

1. I am an attorney with the law firm of McDermott Will & Emery LLP, counsel for the Exxon Mobil Defendants in the above-captioned matter. I submit this Declaration in support of Defendant Exxon Mobil Corporation's Reply Memorandum Of Law In Further Support Of Its Motion To Exclude Testimony And Opinion Of Martin Tallett (hereinafter "Motion"). This Declaration authenticates the exhibits attached hereto and relied on in support of the Motion. In accordance with this Court's Individual Rules and Procedures, the exhibits have been excerpted to include only the relevant material. Copies of each of the exhibits appended hereto were made at my direction on or around June 4, 2009.

2. Attached hereto as Exhibit A are true and correct copies of relevant pages from the deposition transcript of Martin Tallett, who was deposed in this matter on April 29, 2009.

3. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, NY
June 4, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael J. Dillon", written over a horizontal line.

Michael J. Dillon

Exhibit “A”

mt042909.txt

10 Q. Indeed, given exchange agreements and
11 given the trading that typically goes on, it's
12 not only possible, it's probable, isn't it?

13 A. Yes.

14 Q. Okay. And would you also agree with
15 me that one could estimate market share at the
16 level of distribution as opposed to retail or
17 production?

18 A. In principle one could cut the slice
19 through the market at that point.

20 Q. And which of those levels, the three
21 levels we just discussed, production,
22 distribution and retail, does 782C measure?

23 A. Well, as I said, my original
24 interpretation was that it emphasized more the

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1 producers in terms of refiners and blenders,
2 acknowledging that it did move -- acknowledging
3 that it moves somewhere down the supply chain,
4 but that it stopped at the level of the larger
5 entities, and therefore the emphasis was more on
6 the upper end of the supply chain than it was on
7 the retail end of the supply chain.

8 Q. By the "upper end," when you use that
9 term you mean at the production end, correct?

10 A. Yes.

11 Q. But it is now your understanding that
12 it does not emphasize production end data, is
13 that correct?

14 MR. PLACHE: Note my objection to the
15 form of the question.

16 You can answer that.

17 A. I think based on reassessing, I think
18 it's cutting a slice somewhat further down the
19 supply chain. So for some instances that may
20 make no difference, in other instances it may.

21 BY MR. MCGILL:

22 Q. In the instances where it would make
23 no difference, what are the circumstances under
24 which it would make no difference?

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1 A. Well, for example, if you had an Exxon
2 Mobil that supplied information straight through
3 to a non-exclusionary list company.

4 Q. In a situation where the entity
5 submitting the EIA-782C form is not the original
6 refiner of that product, is there any way to
7 ascertain the refiner from the 782C data?

8 A. Sorry, can you repeat the question,
9 please?

10 Q. Sure.

11 MR. MCGILL: Can we read it back?

12 (Whereupon, the reporter read back the
13 pending question.)

14 A. Based on my current understanding, no.

15 BY MR. MCGILL:

16 Q. Okay. And so am I correct in my
17 understanding that the utilization of 782C data
18 in your view undercounts, I think you said
19 underreports, the market share from the
20 refiners?

21 MR. PLACHE: Objection to the
22 characterization of the previous statement.

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23 But you can answer that.
 24 A. Well, as I mentioned earlier, I have

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 1 not had time to come up with some considered
 2 opinion, so I reserve the right to reassess my
 3 opinion on that. I mentioned my initial
 4 reaction is that it may tend to underreport.

5 BY MR. MCGILL:

6 Q. Okay. Do you intend to supplement
 7 your opinion on this point?

8 A. I would need to discuss that with
 9 counsel.

10 Q. Okay. Given your new understanding,
 11 is it your opinion that EIA-782C data is the
 12 method that should be used to calculate market
 13 share in this case?

14 A. I still think it's a method that
 15 should be considered. As I said, I would like
 16 to reserve the option to reconsider my opinion.
 17 But as I mentioned a few minutes ago there are,
 18 I still believe, definite -- there's a definite
 19 value in the 782C information, and my view at
 20 the moment is that it still has a role.

21 Q. Are you prepared as you sit here today
 22 to say that that method should be used to
 23 calculate market share in this case?

24 MR. PLACHE: Objection to form.

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 1 You can answer that to the extent you
 2 can answer that.

3 A. Well, the answer is it may be, because
 4 at the moment what I think is lacking is a
 5 clear-cut method that has been presented by the
 6 Defendants in a cohesive way; in other words, a
 7 method that will -- that is proposed by the
 8 Defendants to cover all Defendants has not been
 9 put forward, so there's a big piece missing
 10 here. We've had fragmented responses from some
 11 Defendants, that's very much a partial picture,
 12 and that -- there's been no proposal put on the
 13 table by the Defendants to say we have all sat
 14 down together and we have now agreed between us
 15 that this is the methodology, the single and
 16 comprehensive methodology for every Defendant
 17 that we propose to use, that does not exist at
 18 the moment, and so in part I have to reserve
 19 judgment because that hole is there.

20 BY MR. MCGILL:

21 Q. You yourself also offered a method
 22 that we have been discussing that is utilization
 23 of EIA-782C data. Do you have an opinion based
 24 on your new understanding of whether or not that

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 1 method, 782C data, is more or less accurate than
 2 the methods accounted by any of the Defendants
 3 with respect to estimating the market shares in
 4 New York Harbor?

5 A. Well, again, as I mentioned earlier,
 6 I'm not really in a position where I can give a
 7 full answer to that because I haven't been able
 8 to examine the workings of any of the methods
 9 put forward by Defendants.

10 MR. PLACHE: If this is a good time,